

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)	
JOHN E. KAMSTRA DAIRY,)	
)	
Appellant,)	PCHB No. 80-194
)	
v.)	FINAL FINDINGS OF FACT
)	CONCLUSIONS OF LAW
STATE OF WASHINGTON,)	AND ORDER
DEPARTMENT OF ECOLOGY,)	
)	
Respondent.)	

THIS MATTER, the appeal from the issuance of a \$1500 civil penalty for the alleged violation of RCW 90.48.080, having come on regularly for formal hearing on May 7, 1981, in Lacey, and appellant represented by his attorney, Bryce Dille, and respondent represented by its attorney Charles K. Douthwaite, with David Akana presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 1st day of June, 1981, and more than twenty days having elapsed from said service; and


The Board having received no exceptions to Proposed Order and

1 the Board being fully advised in the premises; NOW THEREFORE,

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
3 Order containing Findings of Fact, Conclusions of Law and Order dated
4 the 1st day of June, 1981, and incorporated by reference herein and
5 attached hereto as Exhibit A, are adopted and hereby entered as the
6 Board's Final Findings of Fact, Conclusions of Law and Order herein.

7 DONE this 26th day of June, 1981.

8 POLLUTION CONTROL HEARINGS BOARD
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11 DAVID AKANA, Member
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14 GAYLE ROTHROCK, Member
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26 FINAL FINDINGS OF FACT
27 CONCLUSIONS OF LAW & ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JOHN E. KAMSTRA DAIRY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-194

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the appeal from the issuance of a \$1500 civil penalty for the alleged violation of RCW 90.48.080, came before the Pollution Control Hearings Board, Gayle Rothrock and David Akana (presiding), at a formal hearing in Lacey on May 7, 1981.

Respondent was represented by Charles K. Douthwaite, Assistant Attorney General; appellant was represented by his attorney, Bryce Dille. Court reporter Carolyn Koinzan recorded the proceeding.

Having heard the testimony, having examined the exhibits, and having considered the contention of the parties, the Board makes these

EXHIBIT A

FINDINGS OF FACT

I

On March 27, 1980, after several days of unusually heavy rainfall, respondent's inspector observed manure wastes from appellant's field entering two field ditches located on his sixty-five acre dairy farm near Eatonville, Washington. The field ditches flowed into a road ditch and then into a tributary to South Creek (also known as Muck Creek), a part of the public waters of the state. The inspector saw a manure spray gun in the field which was not operating when observed. Appellant was informed of the observations.

II

On March 3, 1980, respondent's inspector conducted another inspection of the site. Again, manure wastes were seen leaving appellant's field and eventually entering the tributary to South Creek.

Water samples taken above and below the point of discharge into the tributary were taken. Laboratory results showed high fecal coliform in the tributary downstream from the roadside ditch discharge.

III

Because of the high depth of the water in the unnamed tributary to South Creek, respondent was not able to conduct a resource damage assessment.

IV

Appellant's operation has been the subject of respondent's inspections beginning in March of 1974. On April 21, 1975, respondent's inspector saw manure solids reaching the tributary to

1 South Creek and cautioned appellant to keep a close watch on the
2 manure spray gun location. Thereafter, appellant discussed with his
3 sons the necessity to avoid polluting the water. Appellant's
4 operation was not again identified as a pollution source until the
5 events of March 27 and 31, 1980. Since then he did communicate with
6 the Pierce County Conservation (PCC) District--sometime after March
7 12, 1981--regarding formulation of a plan to avoid water quality
8 violations. The communication was initiated by respondent's referral
9 to the PCC District.

10 V

11 For the discharges observed on March 27 and 31, 1980, appellant
12 was assessed a \$1500 civil penalty. Respondent considered the March
13 27 violation to be "gross" in the volume of discharge and allocated
14 \$1000 of the penalty for that day. The March 31 violation was not as
15 severe, leading respondent to allocate \$500 of the penalty for that
16 day. Appellant sought and was denied mitigation of the penalty by
17 respondent. The penalty was appealed to this Board.

18 VI

19 Appellant has been a dairy farmer since 1967. He moved to his
20 present location in 1969. He maintains 325 cows on the 65 acre farm.
21 Milked dairy cows total 250 of that number.

22 Liquid manure from the operation comes as a result of the cleaning
23 of the milking area. The liquid is collected and put into a holding
24 tank with enough capacity for one day's accumulation. It is disposed
25 by pumping through hoses into a spray gun where it is spread over 1 to

1 1-1/2 acres of pasture. The spraying of a discreet area takes 30 to
2 40 minutes each day for three days. The spray gun is then moved. It
3 takes 6 months for appellant to cover his fields using this practice.

4 On March 27, 1981, appellant had been spraying his middle or lower
5 field for two days. Heavy rains had accompanied the spraying activity
6 and the middle field--the lowest of appellant's property--was
7 oversaturated. Appellant was not actually aware that manure was
8 flowing off the property before respondent's inspector arrived on
9 March 27. Appellant moved the spray gun after he was informed of the
10 inspector's observations.

11 VII

12 The tributary to South Creek is a class A water.
13 WAC 173-201-070(6). Water quality criteria applicable to such waters
14 sets fecal coliform values of 100 organisms per 100 milliliters (ml)
15 with no more than 10 percent of the samples exceeding 200
16 organisms/100 ml. WAC 173-201-045(2)(c)(i)(A). Appellant's discharge
17 increased the coliform count from 36 col./ml upstream to 670,000
18 col./100ml downstream.

19 VII

20 Any Conclusion of Law which should be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings the Board comes to these
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27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

CONCLUSIONS OF LAW

I

The matter which was observed in the ditches and the unnamed tributary to South Creek is a pollutant within the meaning of RCW 90.48.020.

II

Appellant unlawfully caused, permitted or suffered to be discharged a pollutant into public waters in violation of RCW 90.48.080 and for which a civil penalty was properly assessed under RCW 90.48.144. Appellant does not dispute his liability but seeks reduction or suspension of the penalty.

III

The pollution events on March 27 and 31, 1981, were caused by the simultaneous occurrences of a very heavy rainfall, the application of manure for two days on a wet, low-lying field, and the apparent forgetfulness of appellant to keep a close watch on the results of his spraying. A civil penalty, appellant's first, is appropriate in this instance. After observing appellant, and considering the circumstances of this case, we conclude that the policies of ch. 90.48 RCW would be well served if \$1000 of the civil penalty assessed was suspended on condition that he not violate any provision of that Act for a period of two years.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The \$1500 civil penalty (DE 80-286) is affirmed, provided that \$1000 of such penalty is suspended on condition the appellant not violate any provision of ch. 90.48 RCW for a period of two years from the date that this order becomes final.

DATED this 1st day of June, 1981.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Member

David Akana
DAVID AKANA, Member

did not participate
NAT W. WASHINGTON, Chairman

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER